

REMARKS

Claims 1-25 remain in the referenced application. New claims 26 and 27 have been added.

Claims 1-3, 5-7, 15-17, and 19 have been rejected by the Examiner, and claims 4, 8-14, 18, and 20-25 have been objected to by the Examiner. The Applicant has amended claims 1, 4, 6-7, 9, 11, 13-14, 18, 20, 22, and 25. Claims 5, 8, 15-17, and 19 have been canceled.

Claims 1-3, 5-7, 17, and 19 stand rejected under 35 U.S.C. §102(b) as being anticipated by Sampson, et al. (U.S. Patent No. 6,364,165, hereinafter referred to as Sampson). The Examiner contends that Sampson discloses an evacuation system comprising a housing 10, an evacuation member 30, a pinch valve, and a driver 40. The Examiner has deemed that claim 8 along with any intervening claims contains patentable subject matter. Applicant has incorporated the limitations of claims 5, 7, and 8 into claim 1. Applicant's amended claim 1 now recites, "a housing including a product package containing a product; an evacuation member disposed in the housing, wherein the evacuation member engages the product package and applies pressure thereto, such that product in the product package moves toward an outlet in the product package for dispensing; a driver in communication with the evacuation member, wherein the driver moves the evacuation member to dispense product when the driver is powered; and a controller in electrical communication with the driver, wherein the controller powers the driver for a predetermined interval to dispense product from the product package, and further wherein the controller monitors the current applied to the driver, thereby deducing the forces applied to the product package." Applicant respectfully asserts that Applicant's amended claim 1 is drawn to a controller that monitors the current applied to the driver. Applicant's original claim 8 recited, "wherein the controller monitors the voltage applied to the driver." Applicant has rewritten the limitations of Applicant's original claim 8 to more accurately reflect Applicant's disclosure in the specification. As recited on page 23, line 4, of Applicant's disclosure, "The current applied to the driver 185 is monitored to limit the maximum squeeze force applied to the product package 210." Applicant respectfully asserts that Sampson does not disclose a controller that monitors the current applied to the driver, and therefore, cannot anticipate Applicant's

amended claim 1. Accordingly, Applicant further asserts that claim 1, as amended, is patentable over Sampson, and respectfully requests that the rejection of claim 1 under 35 U.S.C. §102(b) be withdrawn.

Claims 2-3 stand rejected under 35 U.S.C. §102(b) as being anticipated by Sampson. Applicant has amended claim 1 to incorporate the limitations of claims 5, 7 and 8. As claims 2-3 depend from claim 1, the rejections of claims 2-3 under 35 U.S.C. §102(b) are now moot, and claims 2-3 are now patentable over Sampson.

Claim 4 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As such, claim 4 has been rewritten in independent form, and further includes the limitations of Applicants original claims 1 and 4. Applicant's claim 4, as amended, recites, "a housing including a product package containing a product; and an evacuation member disposed in the housing, wherein the evacuation member engages the product package and applies pressure thereto, such that product in the product package moves toward an outlet in the product package for dispensing, and further wherein a pump is coupled to the outlet of the product package for evacuating the product from the package." Applicant accordingly submits that claim 4, as amended, is patentable and requests that the objection to claim 4 be withdrawn.

Claim 5 has been canceled, and accordingly, the rejection of claim 5 under 35 U.S.C. §102(b), is now moot.

Claim 6 has been rejected under 35 U.S.C. §102(b) as being anticipated by Sampson. Applicant respectfully asserts that claim 6 has been amended to depend from amended claim 1 that has previously been argued patentable. Applicant's claim 6 now further defines the driver of claim 1. Applicant contends that claim 6, as amended, is now patentable with amended claim 1 over Sampson, and respectfully requests that the rejection under 35 U.S.C. §102(b) be withdrawn.

Claim 7 as been rejected under 35 U.S.C. §102(b) as being anticipated by Sampson. Applicant respectfully asserts that claim 7 has been amended to depend from claim 2, and further asserts that portions of claim 7 relating to the controller driving the driver for a predetermined period have been

incorporated into claim 1. Claim 7, as amended, now recites, "wherein the controller opens the valve during the predetermined period, thereby dispensing product from the package." As claim 2 depends from claim 1, and claim 1, as amended, has previously been argued patentable, it follows that claim 7 is now patentable over Swanson. Applicant respectfully requests that the rejection of claim 7 under 35 U.S.C. §102(b) be withdrawn.

Claims 17 and 19 have been rejected under 35 U.S.C. §102(b). Applicant respectfully asserts that claims 17 and 19 have been canceled, and accordingly, the rejections of claims 17 and 19 under 35 U.S.C. §102(b), are now moot.

Claim 9 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant's claim 9, as amended, now depends from claim 1. As claim 1, as amended, has previously been argued patentable, it follows that claim 9 is patentable with claim 1. Applicant respectfully asserts that claim 9 is patentable, and respectfully request that the objection to claim 9 be withdrawn.

Claim 10 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 10 remains in its original form, and depends from claim 9. Claim 9 has previously been argued patentable, and Applicant, therefore, asserts that claim 10 is patentable with claim 9. Applicant respectfully request that the objection to claim 10 be withdrawn.

Claim 11 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As such, claim 11 has been rewritten in independent form, and further includes the limitations of Applicant's original claims 1, 5, and 7. Applicant's claim 11, as amended, recites, "a housing including a product package containing a product; an evacuation member disposed in the housing, wherein the evacuation member engages the product package and applies pressure thereto, such that product in the product package moves toward an outlet in the product package for dispensing; a

driver in communication with the evacuation member, wherein the driver moves the evacuation member to dispense product when the driver is powered; and a controller in electrical communication with the driver, wherein the controller powers the driver for a predetermined interval to dispense product from the product package, and further wherein an encoder outputs a signal to the controller indicating the location of the evacuation member. Applicant contends that Applicant's claim 11, as amended, is patentable, and respectfully requests that the objection of claim 11 be withdrawn.

Claim 12 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 12 remains in its original form, and depends from claim 11, which has been rewritten in independent form. As previously argued, claim 11 is patentable, and therefore, claim 12 is patentable. Applicant respectfully requests that the objection to claim 12 be withdrawn.

Claim 13 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As such, claim 13 has been rewritten in independent form, and further includes the limitations of Applicants original claims 1, 5, and 7. Applicant's claim 13, as amended, recites, "a housing including a product package containing a product; an evacuation member disposed in the housing, wherein the evacuation member engages the product package and applies pressure thereto, such that product in the product package moves toward an outlet in the product package for dispensing; a driver in communication with the evacuation member, wherein the driver moves the evacuation member to dispense product when the driver is powered; and a controller in electrical communication with the driver, wherein the controller powers the driver for a predetermined interval to dispense product from the product package, and further wherein a microswitch is closed when the evacuation member reaches full travel, thereby notifying the controller that the package is empty." Applicant contends that claim 13, as amended, is patentable as it includes all patentable subject matter of the base and intervening claims, and respectfully requests that the objection to claim 13 be withdrawn.

Claim 14 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As such, claim 14 has been rewritten in independent form, and further includes the limitations of Applicants original claims 1, 5, and 7. Applicant's claim 14, as amended, recites, "a housing including a product package containing a product; an evacuation member disposed in the housing, wherein the evacuation member engages the product package and applies pressure thereto, such that product in the product package moves toward an outlet in the product package for dispensing; a driver in communication with the evacuation member, wherein the driver moves the evacuation member to dispense product when the driver is powered; and a controller in electrical communication with the driver, wherein the controller powers the driver for a predetermined interval to dispense product from the product package, and further wherein a hall effect sensor is activated when the evacuation member reaches the end of the travel path, thereby notifying the controller of an empty package condition." Applicant contends that claim 14, as amended, is patentable as it includes all patentable subject matter of the base and intervening claims, and respectfully requests that the objection to claim 14 be withdrawn.

Claim 18 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As such, claim 18 has been rewritten in independent form, and further includes the limitations of Applicants original claims 1 and 17. Applicant's claim 18, as amended, recites, "a housing including a product package containing a product; an evacuation member disposed in the housing, wherein the evacuation member engages the product package and applies pressure thereto, such that product in the product package moves toward an outlet in the product package for dispensing; and at least one roller to engage the product package, wherein the roller is weighted to move through the travel path due to gravitational forces." Applicant respectfully contends that claim 18, as amended, is patentable, and respectfully requests that the objection to claim 18 be withdrawn.

Claim 20 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim

and any intervening claims. As such, claim 20 has been rewritten in independent form, and further includes the limitations of Applicants original claims 1 and 19. Applicant's claim 20, as amended, recites, "a housing including a product package containing a product; an evacuation member disposed in the housing, wherein the evacuation member engages the product package and applies pressure thereto, such that product in the product package moves toward an outlet in the product package for dispensing; and at least one squeegee to engage the product package, wherein the squeegee is weighted to move through the travel path due to gravitational forces." Applicant respectfully contends that claim 20, as amended, is patentable, and respectfully requests that the objection to claim 20 be withdrawn.

Claim 22 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As such, claim 22 has been rewritten in independent form, and further includes the limitations of Applicants original claims 1 and 22. Applicant's claim 22, as amended, recites, "a housing including a product package containing a product; an evacuation member disposed in the housing, wherein the evacuation member engages the product package and applies pressure thereto, such that product in the product package moves toward an outlet in the product package for dispensing; and a package carrier, the package carrier including a package support and a restraining support hingedly coupled to the package support, wherein a product package is inserted into the package support and the restraining support is closed, thereby easing handling and support during insertion into the housing." Applicant respectfully contends that claim 22, as amended, is patentable, and respectfully requests that the objection to claim 22 be withdrawn.

Claim 25 has been objected to by the Examiner as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As such, claim 25 has been rewritten in independent form, and further includes the limitations of Applicants original claims 1, 5, and 7. Applicant's claim 25, as amended, recites, "a housing including a product package containing a product; an evacuation member disposed in the housing, wherein the evacuation member engages the product package and applies pressure thereto,

such that product in the product package moves toward an outlet in the product package for dispensing; a driver in communication with the evacuation member, wherein the driver moves the evacuation member to dispense product when the driver is powered; and a controller in electrical communication with the driver, wherein the controller powers the driver for a predetermined interval to dispense product from the product package, and further wherein the controller determines a frictional voltage profile for the evacuation member and adds the frictional profile to a working voltage profile, thereby ensuring that the evacuation member applies a desired squeeze force to the product package.” Applicant respectfully contends that claim 25, as amended, is patentable, and respectfully requests that the objection to claim 25 be withdrawn.

Applicant has added claims 26 and 27 to include the limitations of Applicant’s original claims 15, 16, and 17. Applicant has further defined the limitations of original claim 16. New claim 26 is drawn to Applicant’s original claim 1, and further including, “at least one roller disposed within the evacuation member, wherein the at least one roller is biased against a backing plate to engage the product package, and further wherein, the at least one roller may overcome the biasing force and move away from the backing plate to accommodate varying product particulate sizes.” Applicant respectfully contends that Swanson does not disclose a roller that adjusts for varying particulate sizes, and therefore, claim 26 is patentable. Applicant respectfully contends that toothpastes are substantially homogeneous, and would be considered unusable if the particulate sizes varied significantly. Accordingly, Applicant respectfully asserts that claim 26 is patentable, as Sampson does not disclose a roller that adjusts for varying particulate sizes.

Applicant has drawn claim 27 to further define the biasing force of claim 26, and is therefore, patentable with claim 26.

Claim 15 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Samson in view of Ylitalo. Applicant respectfully asserts that the limitations of Applicant’s original claim 15 and 16 have been incorporated into new claims 26 and 27. Applicant respectfully asserts that rejections of claims 15 and 16 under 35 U.S.C. 103(a), are now moot, as claims 15 and 16 are canceled.

The prior art made of record has been reviewed by Applicant and is deemed not to anticipate nor render obvious the claimed invention.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejected claims and consideration of the newly presented claims. Applicant further earnestly solicits early allowance of the subject application.

Respectfully submitted,

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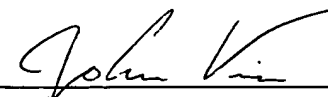
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